

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

NORRIS BROOKS,

Plaintiff,

v.

BROOKE M. BARNETT, ESQ.,

Defendant.

Civil Action No. 18-1522 (CCC)

MEMORANDUM OPINION

This matter has come before the Court on a civil rights Complaint filed by *pro se* Plaintiff Norris Brooks pursuant to 42 U.S.C. § 1983. Because Plaintiff is proceeding *in forma pauperis*, (see ECF No. 7), the Court must screen the Complaint to determine whether the case shall be dismissed because it is frivolous or malicious, fails to state a claim on which relief may be granted, or seeks monetary relief against a defendant who is immune from such relief. 28 U.S.C. § 1915(e)(2). Having completed this screening, and for the reasons stated below, the Complaint is dismissed without prejudice.

The Complaint names a single defendant, Brooke M. Barnett, Esq., Plaintiff's counsel in a prior state criminal matter that is the subject of his lawsuit. However, neither public defenders nor private attorneys are state actors liable under § 1983, because they are not persons acting under the color of law. See *Vermont v. Brillon*, 556 U.S. 81, 91 (2009) (“[T]he relationship between a defendant and the public defender representing him is ‘identical to that existing between any other lawyer and client.’ Unlike a prosecutor or the court, assigned counsel ordinarily is not considered a state actor.”) (citation omitted); *Rieco v. Hebe*, 633 F. App’x 567, 569 (3d Cir. 2015) (“Public defenders are generally not considered state actors for § 1983 purposes when acting in their capacities as attorneys.”) (quoting *Polk Cty. v. Dodson*, 454 U.S. 312, 325 (1981)); *Jackson v. City*

of *Erie Police Dep't*, 570 F. App'x 112, 113 (3d Cir. 2014) (“[P]rivate defense attorney cannot be construed as a person acting under the ‘color of state law’ within the meaning of § 1983”) (citing *Polk Cty.*, 454 U.S. at 317-25); *Bullock v. Sloane Toyota, Inc.*, 415 F. App'x 386, 389 (3d Cir. 2011) (private attorney not liable under § 1983 because plaintiff has not set forth any facts to demonstrate that her attorney was a state actor or acted under color of state law). Accordingly, the Complaint fails to state a claim upon which relief may be granted, and is dismissed without prejudice.

Date: June 30, 2018



Claire C. Cecchi, U.S.D.J.